

# **The Home and Community-Based Services (HCBS) Final Rule & Conflict Free Case Management (CFCM)**

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# What is the HCBS Rule?

- CMS promulgated the HCBS rule on January 16, 2014 with an effective date of March 17, 2014.
  - All states must be in compliance with the HCBS rule by March 17, 2019
- Two Areas of Focus:
  - **Person-Centered Service Planning**
    - 42 CFR 441.301(c)(1) – Process
      - Conflict of Interest Guidelines
    - 42 CFR 441.301(c)(2) – Plan Requirements
    - 42 CFR 441.301(c)(3) – Review
  - **Home and Community Based Settings Requirements**
    - 42 CFR 441.301(c)(4) – Settings characteristics
    - 42 CFR 441.301(c)(5) – Heightened Scrutiny

***Independent•Integrated•Individual***

# Conflict Free Case Management

Any structure developed must adhere to the following tenet\*:

**“Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual *must not* provide case management or develop the person-centered service plan[...]**”

\*42 CFR 441.301(c)(1)(vi)

# Why SC needs CFCM\*

- When the same entity helps individuals gain access to services *and* provides services to that individual, there is potential for a conflict of interest in:
  - **Assuring and honoring free choice**
    - A key tenet of PCP – and a key requirement for Medicaid – is full freedom of choice of types of supports and services and individual providers except where the program has authorized restrictions (such as managed care).
    - A case manager's (CM) job is to help the individual and family become well-informed about *all* choices that may address the needs and outcomes identified in the plan.
    - If there isn't CFCM, the CM may promote conscious or unconscious “steering.”
  - **Overseeing quality and outcomes**
    - Self-policing occurs when an agency or organization is charged with overseeing its own performance
    - Puts the case manager in the difficult position of:
      - Assessing the performance of co-workers and colleagues within the same agency.
      - Potentially having to report concerns to their mutual supervisor or executive director.
  - **The “fiduciary” relationship**
    - Incentives for either over-or under-utilization of services.
    - Possible pressure to steer the individual to their own organization.
    - Possible pressure to retain the individual as a client rather than promoting choice, independence, and requested or needed service changes.

\*CMS, Conflict of Interest Webinar, January 6, 2016

